



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 7, 1994

Honorable Garry Mauro
Commissioner
Texas General Land Office
Stephen F. Austin Building
1700 N. Congress Avenue
Austin, Texas 78701-1495

OR94-536

Dear Commissioner Mauro:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25364.

The Texas General Land Office (the "agency") is involved in ongoing litigation. The opposing party in that litigation has requested documents already sought through the discovery process. The requestor states that he does not believe that the agency has adequately complied with the discovery process and therefore is seeking these same records under the Open Records Act. The agency indicates that it has already provided the requestor most of the documents sought through the discovery process. There is a court order denying the requestor access to other requested documents. The agency has also submitted to this office for review several documents that it contends are not available under the discovery rules. It is our understanding that the documents protected by court order and the documents the agency contends are not discoverable are the only requested documents not already provided to the requestor. The agency asserts that these documents are excepted from disclosure under section 552.103(a).

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

This exception is designed to keep the Open Records Act from operating as a method of avoiding the rules of discovery. Attorney General Opinion JM-1048 (1989) at 4. In Open Records Decision No. 551 (1990) at 3, this office stated:

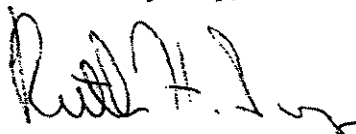
[Section 552.103] enables governmental entities to protect their position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. [citations omitted.] We do not believe that the Open Records Act was intended to provide parties involved in litigation any earlier or greater access to information than was already available directly in such litigation.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 551. As the agency has demonstrated that the requested information relates to pending litigation, section 552.103(a) of the Open Records Act provides an exception from disclosure for these documents. Under these circumstances, the discovery process governs access to the documents.

However, if the parties to the litigation obtain access to these documents through the discovery process or otherwise, no section 552.103(a) interest will generally exist in that information. Open Records Decision Nos. 349, 320 (1982). Thus, if all of the opposing parties in the litigation have access to these documents, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

Ref.: ID# 25364

Enclosures: Submitted documents

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